Supreme Court, U.S.
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No. 94-1489

In The

Supreme Court of the United States

October Term, 1994

PAUL S. RICKETTS, SR. and KIMBERLY ROTH,

Petitioners,

vs.

CITY OF COLUMBIA, MISSOURI,

Respondent.

On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Eighth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Petitioners produced sufficient evidence to establish that the City of Columbia Police Officers treated domestic violence victims differently from other similarly situated individuals by reason of a bias against women and that such treatment was the result of discriminatory purpose.

2. Whether Petitioners produced sufficient evidence to establish a direct causal relationship between the City of Columbia's alleged policy and Petitioners' injuries.

LIST OF PARTIES

Petitioners Paul S. Ricketts, Sr. and Kimberly Roth are individuals.

Respondent, City of Columbia, Missouri is a chartered city pursuant to the provisions of Article VI §19 of the Constitution of Missouri, 1945.

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RESPONDENT'S BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT:

The Respondent, City of Columbia, Missouri, respectfully requests that this Court deny the Petition for Writ of Certiorari submitted by Petitioners, Paul S. Ricketts, Sr. and Kimberly Roth.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 36 F.3d 775. The Eighth Circuit's opinion is reproduced in the Appendix to the

Petition for Writ of Certiorari. (A1-A17). The opinion of the United States District Court for the Western District of Missouri is reported at 856 F.Supp. 1337. The District Court's opinion is reproduced in the Appendix of the Petition for Writ of Certiorari. (A18-A41).

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to those constitutional and statutory provisions cited by the Petitioners, Respondent submits the following to this court:

§455.085.2 R.S.Mo. (1994).

STATEMENT OF THE CASE

Petitioner Kimberly Roth met Sonny Stephens in 1978. She began to live with Stephens and had two children prior to marrying him in 1982. Theirs was a stormy relationship with periods of separation. Stephens verbally and emotionally abused Ms. Roth on a daily basis from 1978 to 1987 while they were together. Stephens often hit her and he broke her nose on two occasions. He was known to throw furniture at her. However, she did not call or make any report to the police between 1978 and 1986. Mr. Stephens threatened to kill Ms. Roth and her family on numerous occasions between 1978 and September 11, 1986, the date of the first ExParte Order of Protection. These death threats were never reported to the police.

On September 11, 1986, Ms. Roth obtained an ExParte Order of Protection from the Circuit Court of Boone

County directing Stephens to refrain from abusing, threatening, threatening to abuse, molesting or disturbing the peace of Ms. Roth or entering her dwelling at 909 Grand, Columbia, Missouri. After the order was issued, Ms. Roth and her children moved from 909 Grand to the home of her parents, Paul and Marge Ricketts, at Holly Park Trailer Court.

On September 11, 1986, Stephens was visiting a friend, across the street from the Ricketts' home, when Ms. Roth and her father returned from the courthouse. Shortly thereafter Stephens was served with the protective order by the sheriff. After being served, Stephens left the area, saying he was going to get a shotgun. Ms. Roth knew that he had a shotgun in their home at 909 Grand, so a call was placed to the Columbia Police Department. Police officers went into the home at 909 Grand but were unable to find either Stephens or his shotgun.

Stephens returned to the home of his friend, across from the Ricketts' home, with a gun which was described as a "piece of junk" that required Stephens to hold the barrel and stock together with one hand to keep it from coming apart. Stephens continued yelling threats and Ms. Roth called the police again, and learned that the police had been sent to 909 Grand, and requested they come to her parents' home. Before the police arrived, Stephens gave the gun to his friend, Mr. Baldwin, and told him that the gun was not functional but he did not want to get into any trouble. Baldwin and Stephens went into the Baldwin home. Officers from the City of Columbia Police Department responded to a "check subject" call. Police officers spoke to Stephens outside without the shotgun. He told them that he had given the gun to Baldwin so he would not get into trouble. One of the

officers asked Stephens to leave the area and he complied. The radio ticket log reflects that the police officer who was assigned the "check subject" call was at Holly Park Trailer Court for nineteen minutes. At the end of this call he reported to the dispatcher: "Stephens arrived to drop off shotgun at 93. They have custody of firearm and will not release it to the subject."

On the following day, September 12, 1986, another Columbia Police Officer responded to a call concerning vandalism to the Ricketts' truck. During the course of this investigation, this officer became aware of the events of the preceding day. This officer then obtained the gun from the neighbor so that Sonny could not come back and get it and create a problem. A report was prepared noting that the gun did not have a firing pin. When the officer pulled the trigger of the shotgun the barrel fell off onto the floor. This shotgun was retained in evidence and not released to Stephens and was not used in the shooting of Marge Ricketts some seven months later.

During the pendency of the first ExParte Order of Protection, Mr. Stephens would go to his wife's parents' trailer during the night and make threats. On at least one of these occasions, Ms. Roth went outside to talk to Sonny but did not attempt to call the police before she went outside. Ms. Roth did not call the police between the time she obtained the initial ExParte Order on September 11, 1986 and September 19, 1986, when she went to court and asked for a termination of the ExParte Order of Protection. Ms. Roth and Mr. Stephens then resumed living together. Stephens' abuse of Ms. Roth continued. However, the City of Columbia Police Department was not informed by Ms. Roth of any escalating violence on the part of Stephens between

September 19, 1986 when she got back together with Stephens and the time that she got the second ExParte Order around March 20, 1987. No member of her immediate family made any calls to the Columbia Police Department in this time period to report any problems with Stephens.

Ms. Roth obtained a second ExParte Order on March 20, 1987. Between March 20, 1987 and April 7, 1987, the date Stephens killed Marge Ricketts, Stephens telephoned Ms. Roth's parents' home but did not talk to her. He would sometimes pull into the Ricketts' driveway and back out or would sit on the side of the street behind the trailer. Ms. Roth said that her mother and her sister, Terry, called the police on some of these occasions but the police only responded on one of these occasions. No radio logs are in existence to verify whether calls were made.

On the morning of April 7, 1987, Ms. Roth, her three year old daughter and her mother were alone in the Ricketts' trailer. Marge Ricketts remarked that she had seen Stephens across the street earlier that morning but no one had called the police to report that. Without warning Stephens walked through the front door and said he wanted to talk to Ms. Roth for five minutes. Marge Ricketts blocked Stephens' path and he raised his arm to hit her. Ms. Roth went to the phone but before she could dial 911, Stephens pulled out a shotgun and threatened to kill her unless she put down the phone. She complied. As Marge Ricketts urged Stephens to leave, he put his shotgun against her stomach and shot her. Stephens then grabbed Ms. Roth and dragged her out of the door and into the woods where she agreed to have sexual relations with Stephens in order to be released. The police were not called on April 7 until after the shooting.

Petitioners Paul Ricketts, Sr. and Kimberly Roth brought suit on March 15, 1990, under 42 U.S.C. §1983 against the City of Columbia and a number of its officers. Prior to trial the individual officers were dismissed on the basis of qualified immunity, the court having found that the plaintiffs had no clearly established due process or equal protection rights to police protection in 1986 and 1987. Missouri did not adopt a mandatory arrest provision in its adult abuse laws until 1989.

Following a jury verdict for the Petitioners, the District Court entered judgment as a matter of law for defendant on September 29, 1993. On October 11, 1994, the Eighth Circuit affirmed the District Court's Order granting judgment as a matter of law to Defendant, City of Columbia. The Eighth Circuit held that (1) Petitioners failed to establish causation and found that a reasonable jury could not have found that there was a causal link between the police custom, if it existed, and Petitioners' injuries, and (2) Petitioners did not prove a submissible case on the issue of gender discrimination and did not produce evidence of a discriminatory intent against women. Petitioners moved for a rehearing or in the alternative a rehearing en banc. Both motions were denied by the Eighth Circuit on December 9, 1994. (A42).

SUMMARY OF THE ARGUMENT

I. This case presents no issue appropriate for the Court's exercise of its discretionary jurisdiction. Petitioner merely challenges the interpretation of the Court of Appeals and fails to identify any conflict among the circuits or with prior decisions of this Court. Further, the case presents no issue of general importance since the Missouri statute with

respect to domestic violence changed two years after the incidents which are the subject of petitioners' lawsuit, and as such this case would have little or no value as precedent.

II. Petitioners' causation theory fails to present an issue appropriate for this Court's exercise of its discretionary jurisdiction for the reason that Petitioner is asking this Court to reconsider the sufficiency of evidence that has already been addressed by two courts below.

REASONS FOR DENYING THE WRIT

Petitioners fail to satisfy criteria traditionally applied by the Court in determining whether to grant a Writ of Certiorari. The decisions by the courts below are entirely consistent with the other federal circuits and the decisions of this Court. The basis of Petitioners' Writ of Certiorari is that the courts below were in error and Petitioners now ask this Court to reconsider whether sufficient evidence existed to show a causal link between the alleged policy and Petitioners' injuries, and as a result, whether Petitioners were afforded a lower level of protection and that discriminatory purpose was the motivating factor.

I.

WHETHER THE PETITIONERS PRODUCED SUFFICIENT EVIDENCE TO ESTABLISH THAT THE CITY OF COLUMBIA POLICE OFFICERS TREATED DOMESTIC VIOLENCE VICTIMS DIFFERENTLY FROM OTHER SIMILARLY SITUATED INDIVIDUALS BY REASON OF A BIAS AGAINST WOMEN AND THAT SUCH TREATMENT WAS THE RESULT OF DISCRIMINATORY PURPOSE.

There is surprisingly little disagreement between Petitioners and Respondent in terms of what constitutes a submissible case under the Equal Protection prong of the Fourteenth Amendment. The Court of Appeals noted that three other circuits had addressed the issues raised by Petitioner on appeal. *McKee v. Rockwall*, 877 F. 2d 409, 413 (5th Cir. 1989), *cert. denied* 493 U.S. 1023 (1990); *Hynson v. City of Chester*, 864 F.2d 1026, 1032-33 (3rd Cir. 1988); *Watson v. City of Kansas City*, 857 F.2d 693, 696 (10th Cir. 1988). The Eighth Circuit adopted the standard set forth in these cases holding that the basic elements of proof under the framework of 42 U.S.C. §1983 required plaintiff to prove (1) a constitutional violation- that the municipality had a custom of providing less protection to victims of domestic abuse with an intent to discriminate against women on the basis of their gender, and (2) that the unconstitutional municipal custom caused the plaintiff's injuries. The Petitioners have not claimed that the application of this standard was erroneous. Petitioners continue to rely on these cases for support.

With respect to the requirement of discriminatory purpose and disproportionate impact, the court below correctly applied the standards set forth by this Court in *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256 (1979); and *Washington v. Davis*, 426 U.S. 229 (1976). Petitioners are now asking this Court to review the sufficiency of evidence and reconsider the quantum of proof necessary to establish a submissible case. It would be an inappropriate exercise of the Court's discretionary power of review to reconsider the evidence when there is no disagreement as to the applicable law but rather only the sufficiency of the evidence below.

Further, the Petitioners erroneously assert they can never make a submissible case given the constraints of the decision by the Court of Appeals. To the contrary, the courts below provided instruction as to why the evidence was not sufficient.

In granting defendant's motion for judgment as a matter of law, the District Court assumed for the purposes of its analysis, the existence of the policy or custom complained of. The District Court then identified numerous examples of what Petitioners could have done to establish a submissible case on the issue of gender discrimination. (A34-A39). The District Court noted that there was no evidence to show discriminatory intent towards women. The few examples cited by the Petitioner at best showed a discriminatory intent against domestic disputes. Additionally, the Petitioners may have introduced a difference in arrest rates, but failed to show a comparison with a number of non-domestic disturbances including women and the arrest and report rates for those situations.

The Court of Appeals for the Eighth Circuit also noted that the Petitioners failed to present evidence that the presumed policy or municipal custom was motivated by an intent to discriminate against women (A12). The Court of Appeals agreed with the District Court in noting that a more accurate indicator of intent to discriminate would have been a comparison of arrest rates involving males as victims of domestic abuse with arrest rates when women are the victims. (A14-A15, n.2). There was no evidence that male victims of domestic abuse were treated differently than female victims of domestic abuse. The Eighth Circuit found Petitioners' expert's statistical analysis lacking, in part because it did not

account for differences that enter into a police officer's discretionary decision to arrest. *See, McKee, supra at 415.*

In short, Petitioners failed to establish a basic requirement of an Equal Protection claim, that they were treated differently than similarly situated individuals.

Petitioners urge that in 1986 and 1987 the preferred response to domestic violence should have been presumptive arrest, but in so doing, acknowledge that the law with respect to domestic violence changed in the State of Missouri in 1989 with the adoption of a mandatory arrest law. §455.085.2 R.S.Mo. (1994).

The Petitioners are in essence arguing that the police officers for the City of Columbia improperly exercised the discretion granted to them when they did not arrest Sonny Stephens. Much of that discretion has since been removed by state statute with the adoption of a presumptive arrest statute, §455.085.2 R.S.Mo. (1994) in 1989. If this Court granted Petitioners' Writ of Certiorari, it would affect only the Petitioners in the present case. The intervening change in the law makes this case sufficiently unique so that its value as precedent is likely to be minimal.

II.

WHETHER PETITIONERS ESTABLISHED A DIRECT CAUSAL RELATIONSHIP BETWEEN THE CITY OF COLUMBIA'S ALLEGED POLICY AND PETITIONERS' INJURIES.

As with the first question presented for review, Petitioners are asking this Court to review evidence and discuss specific facts with respect to the issue of causation. Both the District Court and Court of Appeals have carefully

considered the facts and have come to the same conclusion that such a speculative argument cannot establish causation.

Petitioners assert that the holding of the Court of Appeals is counter to established principles of law concerning causation but fail to cite a single case to support that proposition. Further, Petitioners can point to no federal decision or decision of this court to support their causation argument.

Petitioners, lacking any other authority for their causation argument, look to the United States Attorney General's task force and the United States Commission on Civil Rights to buttress the claims that the Court of Appeals somehow misunderstood or misapplied "established principles of the law concerning causation". In addition to these generalities, Petitioners ask this court to grant Certiorari based in part on "the experience of the community".

Contrary to Petitioners' assertions, they must establish a direct causal connection between the alleged municipal policy or custom and the claimed constitutional infringement. *City of Canton v. Harris*, 489 U.S. 378, 391-392 (1989). To support liability under §1983, a municipal custom must have been the "moving force" behind the plaintiff's injuries. *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 819 (1985); *Polk County v. Dodson*, 454 U.S. 312, 326 (1981).

The direct causal connection must rise above a mere but/for analysis between cause and effect. *City of Canton*, 489 U.S. at 391-392. There, Justice White noted "In virtually every instance where a person has had his or her constitutional rights violated by a city employee, a §1983 plaintiff will be able to point to something the city 'could have done' to prevent the unfortunate incident". *Id at 392.* To form the basis of liability under §1983, a municipal policy

must be affirmatively linked to and be the moving force behind the constitutional violation. *Tuttle*, 471 U.S. at 819; *Monnell v. The Department of Social Services*, 436 U.S. 658, 694 (1978).

Although Petitioners have addressed the constitutional violation issue as the first question presented for review, the courts below both chose to address the causation argument first, reasoning that proper analysis of Petitioners' claims required the initial analysis of causation. *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115 (1992). As with the first question presented for review, Petitioners are asking this court to review evidence and discuss specific facts with respect to the causation issue. The courts below have squarely addressed the causation issue. The Eighth Circuit found Petitioners' expert's statistical analysis lacking in part because it did not account for the differences that enter into a police officer's discretionary decision to arrest. The Eighth Circuit termed Petitioners' causation argument to be "pure speculation". (A10). The District Court termed this analysis "pure conjecture". (A30).

Petitioners' experts were left to rely on a theory that the acts or omissions of the police officers somehow encouraged or served to embolden Stephens into committing the acts of April 7, 1987. The Court of Appeals held that it was equally plausible, within the context of petitioners' case, that Stephens' arrest would have spawned retaliatory violence from Stephens.

Not only did the Court of Appeals question the lack of a "direct causal relationship", the court correctly surmised that if such a causation argument were allowed to subject a municipality to liability, it would effectively open up municipalities and other governmental units to liability

anytime an employee acted within his discretionary authority.

Both the Court of Appeals and the District Court have carefully considered the facts and have come to the same conclusion that such a speculative argument cannot establish causation. It would be an inappropriate use of the Court's discretionary authority to grant the Petition for Writ of Certiorari on the basis of a speculative causation theory.

It has long been the history of this Court when considering Petitions for Writ of Certiorari to determine whether important issues exist within the context of meaningful litigation. *The Monrosa v. Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959). The District Court acknowledged in its order (A31), that it was error to take judicial notice and instruct the jury on the identity of the City of Columbia official with the "final policy making authority". *City of St. Louis v. Praprotnick*, 485 U.S. 112 (1988). The Eighth Circuit declined to address this issue having disposed of the case on the issues of causation and lack of constitutional deprivation. (A16). The Court should decline to exercise its discretionary jurisdiction when the court below has not addressed an issue that the District Court held was a necessary element to be proved by Petitioners.

CONCLUSION

The City of Columbia, Missouri, prays this Court deny the Petition of Paul S. Ricketts, Sr. and Kimberly Roth for Writ of Certiorari, because the case presents no issue appropriate for the Court's review and because the lower courts' holdings were not in error.

Respectfully submitted,

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